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7  
**UNITED STATES BANKRUPTCY COURT**  
8  
**DISTRICT OF NEVADA**

9 In re

10 ALFRED J.R. VILLALOBOS,  
11 ARVCO CAPITAL RESEARCH, LLC,  
ARVCO FINANCIAL VENTURES, LLC,  
12 ARVCO ART, INC.,

13 Debtors.

Case No. BK-N-10-52248-GWZ  
Chapter 11  
Jointly Administered:

Case No. BK-N-10-52249-GWZ  
Case No. BK-N-10-52251-GWZ  
Case No. BK-N-10-52252-GWZ

**DECLARATION OF LEONARD WERBIN  
IN SUPPORT OF LEONARD WERBIN'S  
RESPONSE TO MOTION FOR ORDER  
AUTHORIZING SALE OF 1000 HOLLY  
LANE, 1010 HOLLY LANE AND SIX  
SNOWBIRD LOTS, PAYMENT OF  
COMMISSIONS, AND SETTELEMNT OF  
DISPUTE; REQUEST FOR WAIVER OF  
14 DAY STAY UNDER F.R.BANKR.P.  
6004(h)**

19 Hearing Date:  
Hearing Time:

22 I, Leonard Werbin, being first duly sworn under oath, depose and state as follows:

23 1. I am over the age of 18 years. I have personal knowledge of the facts set forth  
24 below, and if called to testify to such facts, I could and would do so competently. I make this  
25 declaration in support of Leonard Werbin's Response to Motion for Order Authorizing Sale of  
26 1000 Holly Lane, 1010 Holly lane and Six Snowbird Lots, Payment of Commissions, and  
27 Settlement of Dispute; request for Waiver of 14 Day Stay under Fed.R.Bankr.P. 6004 (h).

28 2. I am the Trustee of the Werbin Family Trust and the President of LNJ, Inc.

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1           3. I am prepared to close on the Werbin Family Trust's acquisition of 1000 Holly Lane  
 2 for a purchase price of \$1.85MM and 1010 Holly Lane for a purchase price of \$150,000 and my  
 3 entity, LNJ, Inc.'s acquisition of the Snowbird Lots for \$225,000.

4           4. In October 2013, I entered into contract for the purchase of 1000 Holly Lane with  
 5 Jeffrey Hartman in his capacity as Liquidating Trustee of the Villalobos Liquidating Trust (VLT).  
 6 Since that time and with Mr. Hartman's express permission, I have taken steps to protect 1000 Holly  
 7 Lane from water damage and arranged for contractors and repairmen to work on the Property. I was  
 8 prepared to close on the sale in December 2013 when the title company refused to close the sale due  
 9 to the deed of trust encumbering 1000 Holly Lane also encumbering 1010 Holly Lane, necessitating  
 10 a simultaneous close.

12           5. Since the hearing on the VLT Sale Motion on May 6, 2014, my real estate broker,  
 13 M. Trevor Smith, my counsel, Amy Tirre, and I have been working diligently to resolve the Lake  
 14 Village Homeowners Association ("LVHOA") objection by drafting a Development Agreement to  
 15 be approved by the LVHOA on an expedited basis. The Development Agreement was filed with  
 16 the Court. In addition, we have been negotiating a global release related to the Second Settlement  
 17 Agreement, getting escrow opened on the Snowbird Lots, drafting and obtaining the Trustee's  
 18 signatures to the addenda for 1000 and 1010 Holly Lane, working out title issues with First  
 19 American Title Insurance Company, preparing a draft sale order, and pursuing an insurance claim  
 20 with BB&T's force placed insurance carrier for missing appliances and water damage to 1000 Holly  
 21 Lane due to improper winterization.

24           6. Notwithstanding the Trustee's support for the sale generally, the Trustee also seeks  
 25 to have "overbids" considered at the hearing. This is problematic for many reasons. As pointed out  
 26 in the reply filed by the LVHOA (Doc# 2099), this request ignores the intervening negotiations with  
 27 the LVHOA, and other developments that have occurred after the hearing on the VLT Sale Motion.

1           7. Fundamentally, the prospect of overbid was never part of the negotiations between  
2 with Mr. Hartman as Liquidating Trustee. Mr. Hartman never notified me that the sale would be  
3 subject to overbid. It is my understanding that Mr. Hartman had authority to enter into the sales  
4 contracts with me and the sales were not subject to court approval. The VLT Sale Motion does not  
5 provide that the sale is subject to overbid. At the hearing on May 6, 2014, the Court asked Mr.  
6 Hartman if he anticipated any other bidders and the reply was, "no." It is my understanding that the  
7 hearing on the VLT Sale Motion was primarily continued to allow the parties to resolve the  
8 LVHOA's objection. As a result of that hearing, I have resolved the LVHOA objection and  
9 continued to work toward moving this sale forward and I am prepared to close. I have relied on  
10 representations that he is the sole buyer for the properties.

12           8. Had I understood that there was potential for overbid, I would have negotiated for  
13 a break-up fee. I have incurred thousands of dollars in attorney's fees and costs to draft and negotiate  
14 the Development Agreement to resolve the LVHOA's objection and move the sales toward closing.  
15 My broker, M. Trevor Smith, has drafted the sale documents and addenda, opened the escrows,  
16 negotiated the short sale with BB&T with written authorization from Mr. Hartman, pursued an  
17 insurance claim for the missing appliances and water damage with BB&T's force-placed insurance  
18 with Mr. Hartman's written authorization, and worked on title issues with First American Title  
19 Company. I have spent countless hours to maintain the property, protect it from further water  
20 damage, and taken steps as the buyer to close these sales. Thus, it is patently unfair to have the sale  
21 subject to an overbid procedure at this late stage in the course of this transaction.

22           9. In addition, the short sale that has been approved by BB&T is specific to me. I signed  
23 the Arm's Length Buyer Affidavit that BB&T approved, and therefore, I am the only buyer qualified  
24 to acquire 1000 and 1010 Holly Lane. Moreover, the short sale has only been extended through  
25 June 16, 2014.

1       10. Further, the Mutual Release that has been drafted and circulated among the parties is  
2 conditioned upon my being the sole buyer who is approved by the court and who closes the sales.  
3 Without a sale to Mr. Werbin, nobody gets released from any claims, and I believe I have claims  
4 arising from the course of this transaction.

5       11. I am prepared to close as buyer for the Properties for the price and terms stated in the  
6 agreements and I object to being in a bidding war over the Properties due to the Trustee's attempt  
7 to impose this overbid condition upon the sale at this late stage.

8       12. On another note, I believe it is necessary to respond to the Trustee's position that  
9 Mr. Andy Chisari and Sotheby's should receive a commission from these sales. It is simply  
10 incomprehensible to me that the Trustee takes the position that Andy Chisari and Sotheby's should  
11 receive the broker's commission from the sales. Trevor Smith is the broker who has been working  
12 on this deal since September 2013. He is my broker. He has drafted the sales contracts and the  
13 addenda. He has opened the escrows with First American Title Company. Mr. Smith obtained a  
14 written authorization from Mr. Hartman to negotiate a short sale with BB&T for 1000 and 1010  
15 Holly Lane and he was successful in doing so. He is the person who raised the prospect of pursuing  
16 a claim for the missing appliances and water damage to 1000 Holly Lane. Mr. Hartman gave Mr.  
17 Smith a written authorization to pursue the insurance claim. After three attempts, the insurance  
18 claim is being processed for the benefit of the property due to Mr. Smith's efforts. Mr. Smith also  
19 has coordinated contractors to perform repair work. The agreement for the sale of 1000 Holly Lane  
20 provides for a 6% commission to Mr. Smith. Mr. Trevor Smith has spent countless hours working  
21 for his commission and has clearly earned it. To my knowledge, Mr. Chisari has had no involvement  
22 in bringing these sales to a close. It is unfathomable as to why the Trustee, a newcomer to this deal,  
23 seeks to impair Mr. Smith's well-earned commission. It should not be countenanced by this Court.

24       13. I also seek to bring to this Court's attention the issue of the insurance claim for the  
25  
26

1 missing appliances and water damage to 1000 Holly Lane, which is in excess of \$200,000. Mr.  
2 Smith has been pursuing the claim against BB&T's force-placed insurance with the written  
3 authorization from Mr. Hartman.

4       14. The specific language of the authorization that Mr. Hartman signed in favor of Trevor  
5 Smith to pursue the insurance claim provides that it was for the benefit of the buyer and whoever  
6 had expenses with respect to the repairs. A copy is attached hereto as Exhibit A. My understanding  
7 has always been that the insurance coverage would be used to do the repair work and reimburse  
8 anyone who had expended funds in the process of the repair work. To the extent that the VLT had  
9 expended sums for emergency repair work, those sums would be reimbursed. To the extent that  
10 work has not been completed, the insurance claim would cover those costs for the benefit of the  
11 property and me as the buyer.

12       15. The discovery of the improper winterization occurred in late October 2013 during  
13 my due diligence period. A series of emails from October 2013 through May 2014 are attached to  
14 hereto as Exhibit B, showing how both Mr. Smith and I continued to communicate with Mr. Hartman  
15 in his capacity as Liquidating Trustee to pursue the insurance claim for the benefit of the property.  
16 I always anticipated that the insurance coverage would be used to repair and improve the property  
17 as provided in the written authorization and based upon our discussions.

18       16. We agreed with Mr. Hartman in November 2013 that the insurance claim would not  
19 be addressed in the purchase agreement, but would be a separate matter.

20       17. Through my counsel, Ms. Tirre, I have raised the insurance claim with the Trustee  
21 and Trustee's counsel, but we yet to receive an adequate response other than that the Trustee seeks  
22 to keep the proceeds, if any, for the estate, which is contrary to how the claim is being processed  
23 (payments should go to vendors to replace appliances and do repair work), the written authorization  
24 to Mr. Trevor Smith, and the discussions with Mr. Hartman on this point as evidenced by the emails.  
25  
26  
27  
28

18. The claim is at a critical point. A police report needs to be filed and an interview with Mr. Villalobos need to be conducted in order to bring the insurance claim to its conclusion. The insurance claim is in excess of \$200,000. After the sale closes and BB&T has been paid, it may not be incentivized to continue the pursuit of the claim for the benefit of its former collateral. Copies of Mr. Tirre's emails to the Trustee and her counsel are attached hereto as Exhibit C.

19. I respectfully request that the Court approve the sales of 1000 and 1010 Holly Lane to the Werbin Family Trust and the Snowbird Lots to LNJ, Inc. without overbid, approve the commissions due to Mr. Smith, 6% for 1000 and 1010 Holly Lane and 3% for Snowbird Lots, and to require the Trustee to execute any and all documents to process the insurance claim to its conclusion for the benefit of 1000 Holly Lane so that the water damage is repaired and the missing appliances are replaced.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge and that this Declaration was executed on the 11th day of June, 2014 in South Lake Tahoe, California.

/s/ Leonard Werbin

Leonard Werbin

## **CERTIFICATE OF SERVICE**

Pursuant to FRBP 7005 and FRCP 5(b), I certify that I am an employee of Law Offices of Amy N. Tirre, that I am over the age of 18 and not a party to the above-referenced case, and that on June 11, 2014 I filed and served the foregoing **DECLARATION OF LEONARD WERBIN IN SUPPORT OF LEONARD WERBIN'S RESPONSE TO MOTION FOR ORDER AUTHORIZING SALE OF 1000 HOLLY LANE, 1010 HOLLY LANE AND SIX SNOWBIRD LOTS, PAYMENT OF COMMISSIONS, AND SETTELEMNT OF DISPUTE; REQUEST FOR WAIVER OF 14 DAY STAY UNDER F.R.BANKR.P. 6004(h)** as indicated:

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DATED June 11, 2014.

20 \_\_\_\_\_ /s/ Genevieve DeLucchi  
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